

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte EDWARD W. VAN ROMER

Appeal No. 2006-1255

Application No. 10/655,076

ON BRIEF

Before OWENS, CRAWFORD, and LEVY, *Administrative Patent Judges*
OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from a rejection of claims 1-17, which are all of the pending claims.

THE INVENTION

The appellant claims a multi-compartment, foldable, portable containment device for collecting contaminated fluid. Claim 1 is illustrative:

1. A multi-compartment foldable and portable containment for collecting contaminate fluid comprising;

flexible sheeting forming a floor;

flexible sheeting forming exterior walls connected with said floor adjacent its periphery forming an enclosed area;

a plurality of flexible interior walls each connected along a lower edge with said floor and at each end with a pair of opposed of said exterior walls, said interior walls along with said exterior walls and said floor forming a plurality of containment areas within said enclosed area;

a plurality of foldable braces connected with said exterior walls and having an up position for maintaining said exterior walls in an upstanding position and a down position in which said walls lie on said floor;

said interior walls having an interior wall support for maintaining said interior walls in an upstanding position when fluid is in said containment areas; wherein,

said multi-compartment containment may be folded into a compact generally flat configuration for storage and may be unfolded and spread into an expanded multi-compartment unit which said exterior and interior walls are maintained in an upright position forming said plurality of containment areas for containing said contaminated fluid.

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THE REFERENCES

Van Romer et al. (Van Romer '588)	5,090,588	Feb. 25, 1992
Shaw et al. (Shaw)	5,429,437	Jul. 04, 1995
Van Romer (Van Romer '233)	5,762,233	Jun. 09, 1998
Kellogg et al. (Kellogg '188)	5,971,188	Oct. 26, 1999
Kellogg et al. (Kellogg '924)	RE37,924	Dec. 10, 2002

THE REJECTIONS

The claims stand rejected as follows: claim 16 under 35 U.S.C. § 112, first paragraph, written description requirement; claim 17 under 35 U.S.C. § 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter which the appellant regards as the invention;¹ claims 1, 7, 14 and 15 under 35 U.S.C. § 102(b) as anticipated by Kellogg '188 or Kellogg '924; claims 1-8 and 13-17 under 35 U.S.C. § 103 as obvious over Van Romer '233 in view of Kellogg '188 and Kellogg '924; claims 1, 2 and 7-17 under 35 U.S.C. § 103 as obvious over Van Romer '588 in view of Kellogg '188 and Kellogg '924; and claim 10 under 35 U.S.C. § 103 as obvious over Van Romer '588 in view of Kellogg '188, Kellogg '924 and Shaw.

¹The rejection under 35 U.S.C. § 112, second paragraph, is withdrawn as to claims 14-16 in the examiner's answer (page 9).

OPINION

We affirm the rejection of claim 17 under 35 U.S.C. § 112, second paragraph, and reverse the other rejections. Regarding the rejections over prior art we need to address only the independent claims, i.e., claims 1, 14 and 17.² Each of these claims requires a multi-compartment containment for collecting contaminated fluid.

*Rejection of claim 16 under
35 U.S.C. § 112, first paragraph*

The examiner argues that the appellant's original disclosure does not provide adequate written descriptive support for "including a drain in an outer wall of each said compartment" in claim 16 (answer, page 4). The appellant's original specification states that "[a] drain 54 is provided with each compartment, preferably in the lower edge of an exterior wall" (page 9, lines 1-2). Therefore, we reverse the rejection of claim 16 under 35 U.S.C. § 112, first paragraph, written description requirement.

²The examiner does not rely upon Shaw for any disclosure that remedies the deficiency in Van Romer '588, Kellogg '188 and Kellogg '924 with respect to claim 1 from which claim 10 depends (answer, page 8).

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*Rejection of claim 17 under
35 U.S.C. § 112, second paragraph*

The appellant does not challenge the rejection of claim 17 under 35 U.S.C. § 112, second paragraph, but, rather, states that “[i]t has been proposed to change ‘interior’ to ‘exterior’ to rectify this indefiniteness” (brief, page 7). Because the rejection of claim 17 under 35 U.S.C. § 112, second paragraph, is not challenged, we summarily affirm that rejection.

*Rejection of claims 1, 7, 14 and 15 under
35 U.S.C. § 102(b) over Kellogg '188 or Kellogg '924*

Kellogg '924 is a reissue of Kellogg '188. Consequently, we address only one of these references, i.e., Kellogg '188.

Kellogg '188 discloses a collapsible container for storing and transporting objects such as garments and toys (col. 1, lines 15-19). The container has side panels (20) comprised of a frame (22), a web (24) and edging (26) (col. 3, lines 54-56). “The web **24** is a flexible foldable material, such as nylon cloth or nylon mesh, but can be any suitably flexible material. The nylon, or other flexible material, may be solid or perforated” (col. 3, lines 62-65). The elements of the container preferably are attached by stitching, but can be attached by other methods

including heat sealing, gluing and the like (col. 4, lines 58-63). Nylon mesh divider panels (80,82) may be stitched to the webs of opposite side panels to form separate compartments within the container (col. 5, lines 5-13).

The examiner argues that the Kellogg '188 container, when it has solid walls, is capable of holding contaminated fluid (answer, pages 5 and 10). The examiner, however, has not provided evidence or reasoning which shows that a solid, flexible material necessarily is capable of holding contaminated fluid. Moreover, the examiner has not established that Kellogg '188 discloses walls that are attached to each other and to the container's floor in a way that enables the container to hold contaminated fluid.

The examiner argues that garments and toys can flow as they are being poured from one container to another or into a washing machine and, therefore, are fluids (answer, page 10). During patent prosecution, claims are to be given their broadest reasonable interpretation consistent with the specification, as the claim language would have been read by one of ordinary skill in the art in view of the specification. See *In re Zletz*, 893

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F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); *In re Sneed*, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). The examiner has not explained, and it is not apparent, how the term "fluid" in the appellant's claims reasonably can be construed, in view of the appellant's specification, as including garments and toys.

We therefore find that the examiner has not carried the burden of establishing a prima facie case of anticipation of the appellant's claimed invention over Kellogg '188 or Kellogg '924. Accordingly, we reverse the rejections under 35 U.S.C. § 102(b) over those references.

*Rejection of claims 1-8 and 13-17 under
35 U.S.C. § 103 over Van Romer '233
in view of Kellogg '188 and Kellogg '924*

Van Romer '233 discloses a single-compartment, portable, foldable containment device for hazardous chemicals such as petrochemicals and fuels (col. 1, lines 5-14).

The examiner argues (answer, page 6):

Both Kellogg references teach the flexible interior partition walls. It would have been obvious to add interior walls to segment the containment area and segregate the fluid being contained to separate different fluids or provide separation to more easily handle a smaller volume of fluid.... It would have

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been obvious to connect the lower edge of the interior walls with the floor and each end of the interior walls with a respective one of a pair of opposed walls to provide a water tight connection prohibiting mixing from one compartment to an adjacent compartment.

The examiner has not established that Kellogg's disclosure of nylon mesh divider panels that are in a container for storing and transporting objects such as garments and toys and are stitched to the container's side panels would have fairly suggested, to one of ordinary skill in the art, contaminated fluid-impervious divider panels that are attached to the container's side panels and floor in a way that enables compartments formed by the divider panels to contain contaminated fluid. Thus, the record indicates that the examiner arrived at the claimed invention by impermissible hindsight in view of the appellant's disclosure. See *W.L. Gore & Associates v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984); *In re Rothermel*, 276 F.2d 393, 396, 125 USPQ 328, 331 (CCPA 1960). Consequently, we reverse the rejection under 35 U.S.C. § 103 over Van Romer '233 in view of Kellogg '188 and Kellogg '924.

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*Rejection of claims 1, 2 and 7-17 under
35 U.S.C. § 103 over Van Romer '588
in view of Kellogg '188 and Kellogg '924*

Van Romer '588 discloses a single-compartment, portable containment device for hazardous chemicals such as agricultural chemicals and the like, having upstanding walls braced with flexible straps such that the walls can collapse when run over by a vehicle (col. 3, lines 17-48).

The examiner's rationale (answer, pages 7-8) for this rejection is similar to that set forth with respect to the rejection over Van Romer '233 in view of the Kellogg references, and is unpersuasive for the reasons given above regarding that rejection.

DECISION

The rejection of claim 17 under 35 U.S.C. § 112, second paragraph, is affirmed. The rejections of claim 16 under 35 U.S.C. § 112, first paragraph, written description requirement, claims 1, 7, 14 and 15 under 35 U.S.C. § 102(b) over Kellogg '188 or Kellogg '924, claims 1-8 and 13-17 under 35 U.S.C. § 103 over Van Romer '233 in view of Kellogg '188 and Kellogg '924, claims 1, 2 and 7-17 under 35 U.S.C. § 103 over

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Van Romer '588 in view of Kellogg '188 and Kellogg '924, and
claim 10 under 35 U.S.C. § 103 over Van Romer '588 in view of
Kellogg '188, Kellogg '924 and Shaw, are reversed.

No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a) (1) (iv).

AFFIRMED-IN-PART

TERRY J. OWENS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
MURRIEL E. CRAWFORD)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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STUART S. LEVY)	
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